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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B-2

FILE:



Office: TEXAS SERVICE CENTER Date:

SEP 16 2010

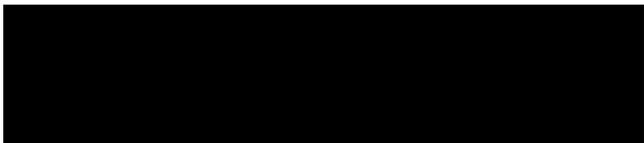
IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on May 15, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal “with the office where the unfavorable decision was made within 30 days after service of the decision.” If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The regulation at 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

In addition, the regulation at 8 C.F.R. § 103.2(a)(1) provides:

*General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The instructions for Form I-290B, Notice of Appeal or Motion, specifically states: “You must file your appeal or motion with the [U.S. Citizenship and Immigration Services] office that made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed).”

The record indicates that the Director, Texas Service Center, issued the decision on May 15, 2009. It is noted that the director properly gave notice to the petitioner that she had 33 days to file the appeal and that her appeal “must be filed at the address at the top of this page.” The petitioner, however, incorrectly submitted Form I-290B to the Nebraska Service Center on June 18, 2009.<sup>1</sup> On June 19, 2009, the Nebraska Service Center returned Form I-290B with fee to the petitioner based on her incorrect filing of the appeal with the Nebraska Service Center. The petitioner submitted the appeal to the Texas Service Center on July 1, 2009, 47 days after the decision was issued. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) states in pertinent part that

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<sup>1</sup> We note that the petitioner’s original submission to the Nebraska Service Center was filed 34 days after the decision was issued.

“[a]n appeal which is not timely filed within the time allowed must be rejected as improperly filed.” Accordingly, as the appeal was not properly filed within the time allowed, it must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed it must be rejected.

It is noted that even if the appeal were timely filed, it would be summarily dismissed. On appeal, counsel generally states:

The petitioner is an athlete of extraordinary ability who provided national and international documentation to reflect her achievements and the documentation was not given consideration in accordance with the requirements. We will submit a brief within 30 days.

Counsel dated the appeal on June 15, 2009. As of this date, approximately 15 months later, the AAO has received nothing further. Accordingly, the record is considered complete as it now stands.

As stated under the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. As the petitioner failed to provide any statement or argument regarding the basis of her appeal, it would have been summarily dismissed.

**ORDER:** The appeal is rejected.